

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-4673

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID DEAN BUZZARD, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the Southern District of West Virginia, at Huntington. Robert C. Chambers, District Judge. (3:08-cr-00014-1)

Submitted: May 28, 2009

Decided: June 2, 2009

Before WILKINSON, KING, and GREGORY, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Troy N. Giatras, THE GIATRAS LAW FIRM, PLLC, Charleston, West Virginia, for Appellant. Charles T. Miller, United States Attorney, Lisa G. Johnston, Assistant United States Attorney, Huntington, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

David Dean Buzzard, Jr., pled guilty to conspiracy to defraud or commit an offense against the United States, in violation of 18 U.S.C. § 371 (2006). He appeals his resulting sixty-month sentence arguing the district court erred in imposing a two-level enhancement for obstruction of justice pursuant to U.S. Sentencing Guidelines Manual § 3C1.1 (2007). Finding no reversible error, we affirm.

We review a criminal sentence for reasonableness, using the abuse of discretion standard. Gall v. United States, 128 S. Ct. 586, 594-97 (2007). An adjustment for obstruction of justice may be made if the government shows by a preponderance of the evidence that the defendant "willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction" USSC § 3C1.1. Application note 4(e) lists attempting to escape from custody before trial or sentencing as an example of conduct warranting this enhancement. Id. at comment. (n.4(e)). Moreover, this court has approved an obstruction of justice enhancement for attempted escape from custody. United States v. Melton, 970 F.2d 1328, 1335 (4th Cir. 1992). The district court's factual findings in connection with the adjustment are reviewed for clear error, and its legal determination are

reviewed de novo. United States v. Sun, 278 F.3d 302, 313 (4th Cir. 2002).

We have reviewed the parties' arguments and the district court's findings at sentencing, and find no clear error in the court's imposition of the enhancement. Accordingly, we affirm Buzzard's sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED